IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.324 OF 1999

Ignatius Gracias & Ors. .. .. Applicants.

versus

Smt.Bella Felix Almeida & Ors. .. Respondents

Mr. Shri Santosh Shetty for applicants.

None for the respondents.

CORAM : D.G. Karnik J.

Date: 18th August 2006

P.C:-

1. Heard learned counsel for the revision applicants. None present for the respondents.

2. By this revision application the applicants take exception to the order dated 26th February, 1999

passed by the City Civil Court, Mumbai holding that it had the jurisdiction to entertain and try the suit.

3. The respondent filed a suit for possession against the revision applicats in the City Civil Court, Mumbai. The revision applicants appeared and in their written statement contended that the City Civil Court had no jurisdiction to try the suit. Issue no. 2 has framed by the court reads as under :-

> " Whether the plaintiffs prove that the suit is properly valued and this court has jurisdiction to entertain and try the present suit ?"

4. It appears that the objection was that the suit valued should have been at more than Rs. 50,000/- and the suit was not properly valued and the court had no pecuniary jurisdiction to entertain and try the suit. Learned Judge of the City Civil Court heard issue no. 2 as the preliminary issue. On considering of material adduced before it, the trial court came to the conclusion that the plaintiff had not valued the suit property correctly. However, on the basis of the material available on record as also the certificate

issued by architect, the trial court came to the conclusion that the total valuation of the property of which possession was sought was Rs.36,000/-. It therefore directed the respondent to alter the valuation and pay proper court fee stamp on Rs.36,000/-. Since the City Civil Court has the jurisdiction to entertain and try suits in respect of the property valued at Rs.50,000/- or less it held that it had the jurisdiction to try and entertain the suit. It accordingly passed the composit order and direct the respondent plaintiff to correct the suit valuation to Rs.36,000/- but held that it has the jurisdiction to entertain and try the suit. That order is impugned in this revision application.

5. Learned counsel for the revision applicant submitted the trial ought not to have heard the issue no.2 as a preliminary issue. He further submitted that the trial court should have heard all the issue together. Since the Trial Court only decided issue no. 2, it exercised its jurisdiction with material irregularity and contrary to the provisions of order 14

of the Code of Civil Procedure. Therefore, the order requires a interference at the hands of this court.

6. Sub Rule 5 of Rule 1 of Order 14 of the code of Civil Procedure (for short the code) imposes a duty on the court to ascertain upon what material propositions of fact or law the parties are at varies and thereupon frame the issues of facts and law. Rule 2 of Order 14 says that notwithstanding that the case may be disposed of on a preliminary issue the court shall, subject to the provision of sub rule 2, pronounce judgment on all issues. Sub Rule 2 of Rule 2 says that where an issue relates to the jurisdiction of the court the court may, if it thinks fit, postpone the settlement of other issues until after the issue as to jurisdiction is determined. Sub Rule 2 of Rule 2 of Order 14 of the code, thus, enables the court to hear and decide the issue regarding jurisdiction of the court as preliminary issue.

7. In view of the clear power vested in the Sub Rule 2 of Rule 2 of Order 14 of the Code, it cannot be

said that the court had no power to decide the issue regarding of its jurisdiction as a preliminary issue. It had the power and it exercised that power. No material irregularity is shown to have been committed in that exercise. That a part I notice that in the trial court the plaintiff had not taken any objection to the trial of issue no. 2 as preliminary issue. In the absence of any objection raised in the trial court, the applicant cannot be allowed to raised the objection as to the procedure for the first time at this stage. In the circumstances the revision application is dismissed.

8. There shall be no order as to costs.

(D.G. KARNIK, J.)